1997 TAX LEGISLATION

BANK FRANCHISE TAX

The rate is increased from 0.000040 to 0.000096. Act 60. Effective August 1, 1997.

CORPORATE INCOME TAX

The corporate income tax has been increased: on income up to $10,000 the tax is 7 percent; on income of $10,001 up to $25,000 the tax is $700 plus 8.10 percent of the excess over $10,000; on income of $25,001 up to $250,000 the tax is $1,915 plus 9.20 percent of the excess over $25,000; on income of $250,001 and over the tax is $22,615 plus 9.75 percent of the excess over $250,000. Act 60. Effective 1/1/97.

The minimum tax for small farm corporations remains $75. For all other corporations, it is increased from $150 to $250. Act 60. Effective 1/1/97.

GASOLINE TAX

The gasoline tax is increased from 15 to 19 cents per gallon. Act 60. Effective for sales and uses on and after August 1, 1997. The one cent Vermont Petroleum Clean-up Fund Fee remains in effect, in addition to the 19 cents per gallon gasoline tax.

HAZARDOUS WASTE TAX

The exclusive method of appealing a hazardous waste tax assessment is an administrative appeal to the Commissioner similar to other tax appeals. Act 50. Effective 6/26/97.

HOMEOWNER AND RENTER REBATE PROGRAM

The income of a person who lives with an elderly or disabled claimant for the primary purpose of providing attendant care services or homemaker or companionship services which allow the claimant to remain in his or her home or avoid institutionalization may be excluded from "household income" in the calculation of the rebate. This expands the limited exception in prior law. Act 50. Effective for claims filed for property tax rebates for calendar years 1997 and after.

Timely filed under-62 rebate claims for 1997 may be taken as a credit against the income tax in the same manner as over-62 claims. Act 60.

LOCAL OPTION TAXES

A municipality in which the education property tax rate in 1997 was less than $1.10 per $100 of equalized educational grand list may enact a 1 percent sales and use tax (excluding tax on telecommunications); a 1 percent meals and alcohol tax; and a 1 percent rooms tax. A municipality opting to impose these taxes must do so no later than July 1, 1998. These taxes may be imposed only during fiscal years 1999, 2000 and 2001. Act 60.

MEALS AND ROOMS TAX

The meals and rooms tax is increased from seven to nine percent. Act 60. Effective for sales of meals and rentals of rooms on and after 10/1/97.

The penalty for removing, covering or defacing a notice posted by the Commissioner, informing the public that the operation has no meals and rooms tax license or that the license has been revoked or suspended, is increased from $100 to $500. Act 50. Effective 6/26/97.

The time for appealing a commissioner's determination in a contested case is 30 days after the decision (a change from 30 days from notice of the decision). Act 50. Effective 6/26/97.

MISCELLANEOUS

A 5 percent tax is imposed on expenditures in excess of $2,500 of lobbyists and employers of lobbyists. The tax is paid to the Secretary of State at the time lobbyist disclosure reports are filed with the Secretary under 2 V.S.A. § 264.

The Legislature fully funded the second phase of the Department's acquisition and development of a new integrated computer system which will replace its antiquated mainframe system. This appropriation will fund the conversion of the trust taxes to the new environment and complete the forms imaging and scanning portion of the project. All the hardware and software necessary to move the processing of those taxes from the old mainframe system to the new integrated system has been acquired.

The Department will conduct a tax expenditure study of the personal income, corporate income, meals and rooms and sales and use taxes. A

report will be presented to the House Ways and Means and Commerce Committees, Senate Finance Committee, House and Senate Appropriations Committees, and the Joint Fiscal Committee of the General Assembly by December 15, 1997. Act 50.

The Department will conduct or contract for a study of the feasibility of a gross receipts tax, general excise tax or other form of business excise tax in the state. A report is to be to submitted to the General Assembly no later than November 15, 1998. Act 60.

To be in good standing for purposes of obtaining a trade or business license, a person must be current with respect to both tax payments and return filings. Act 50. Effective 6/26/97.

Insurance companies writing certain policies will continue to be assessed sums for the expenses of the Vermont Fire Training Council. Act 59 (sunset repealed).

MOTOR VEHICLE PURCHASE AND USE TAX

The rate shall remain at 5 percent until August 1, 1997 when it increased to 6%. Act 60.

MUNICIPAL PROPERTY TAXES

The filing fee for appeals to the State Appraiser of municipal property tax assessments is increased from $15 to $30. The fee will be returned if the appraised value of the taxpayer's property is reduced by more than 20 percent. The requisite reduction was formerly 10 percent. Act 59. Effective 6/30/97.

PERSONAL INCOME TAX

Income tax returns for tax year 1998 will have a "checkoff" for donations to the Vermont campaign fund. Act 64. Also beginning in 1998 is the checkoff enacted last year for donations to the Children's Trust Fund. 1995, No. 164 (Adj. Sess.).

The first $1,500 of National Guard pay received by members who were enlisted for the full year, had an adjusted gross income of less than $47,000 in the previous year and attended requisite training assemblies is exempt. Act 50. Effective for tax years beginning on and after 1/1/97.

The exemption for income received under the armed forces education loan repayment program is continued. Act 50.

Income from intangibles is deemed to be sourced in the state of a taxpayer's domicile. The domicile state may tax the income and Vermont will give the taxpayer a credit for tax paid on that income to the other state (but only if that state provides a similar credit to its residents for income sourced to and taxed by Vermont). This implements an agreement among 11 northeast states and the District of Columbia. Act 50. Effective 6/26/97.

Personal liability for unremitted income tax withholding is extended to officers and agents of business entities such as partnerships and limited liability companies. Former law applied with respect to corporations only. Act 50. Effective 6/26/97.

When a nonresident owner of Vermont real estate sells that property, the buyer must withhold a portion of the sale price and remit it to the Department to ensure that the income tax on the nonresident seller's income is paid. The definition of "nonresident" now includes limited liability companies, the controlling interests of which are held by nonresidents. A nonresident seller may elect to report the entire gain from an installment sale in the year of sale regardless of federal treatment. Under this option, the seller would pay tax at 6% of the gain, and would not need to file successive returns reporting small amounts of tax. Act 50. Effective 6/26/97.

It is clarified that partnerships and limited liability companies are required to make mandatory payments of income tax on behalf on nonresident partners and members only. The word "nonresident" was inadvertently omitted when this legislation was enacted last year. Act 50.

Certain partnerships and limited liability companies which operate affordable housing projects are excepted from the requirement (enacted last year) to make estimated income tax payments on behalf of partners or members. The nonresident partners and members are still liable for income tax and the entity must file information with the Commissioner to enhance compliance. Act 50. Effective 6/26/97.

Limited liability companies with only one member shall be treated as the same type of taxable entity for Vermont tax as for federal tax. Act 50. Effective 6/26/97.

PROPERTY TRANSFER TAX

The first $100,000 in value of property with respect to which a Vermont Home Mortgage Association guarantee fee is paid is exempt from property transfer tax. The remaining value, if any, is taxed at one and one quarter percent. Act 50. Effective 6/26/97; repealed on 7/1/00.

Codifies Department practice of exempting transfers to children's spouses as well as children. Act 50. Effective 6/26/97.

Allows limited liability companies the same property tax exemption as partnerships and corporations upon formation and upon complete dissolution when no gain is recognized at the federal level. Act 50. Effective 6/26/97.

The first $100,000 in value of property transferred to a housing cooperative organized under chapter 7 of title 11 whose sole purpose is to provide principal residences for all of its members or shareholders or to an affordable housing cooperative organized under chapter 14 of title 11, of property to be used as the principal residence of a member or shareholder shall be taxed at one-half of one percent and the value in excess of $100,000 shall be taxed at one and one quarter percent. Act 50. Effective 7/1/93 (refunds must be filed by 4/15/98).

If transferred property will be the homestead of the purchaser the return must include a Declaration of Homestead and the clerk must submit a copy of the return to the Commissioner within three business days of its filing. Act 60. Effective 1/1/99 (The homestead declaration is an essential component of the Homestead Property Tax Income Sensitivity Adjustment enacted as part of the education financing bill).

SALES AND USE TAX

The sales and use tax rate remains at 5 percent until further amended by the Legislature. Act 60. Effective 6/26/97.

Sales tax exemptions were enacted for sales of building materials within any three consecutive calendar years in excess of one million dollars in purchase value which are: (1) used in the construction or expansion of facilities which are used exclusively, except for isolated or occasional uses, for the manufacture of tangible personal property; or (2) incorporated into a downtown redevelopment project as defined by rule by the Commissioner. Act 60. Effective for sales on and after 7/1/97.

The Commissioner may compel the filing of sales and use tax returns and if they are not filed may petition in superior court for filing of these returns. Act 50. Effective 6/26/97.

A sales tax exemption is granted for charitable organizations which sell fresh cut flowers in a once-a-year sale of seven days or less. Act 50. Effective 6/26/97.

The penalty for removing, covering or defacing a notice posted by the Commissioner, informing the public that the operation has no sales and use tax license or that the license has been revoked or suspended, is increased from $100 to $500. Act 50. Effective 6/26/97.

Tracked vehicles will no longer be registered by the Department of Motor Vehicles. They are subject to sales and use tax, but the tax is capped at $900. H.539. Effective 6/26/97.

All-terrain vehicles (ATVs) will no longer be registered and taxed as motor vehicles by the Department of Motor Vehicles. ATVs are now subject to the sales and use tax instead of the motor vehicle purchase and use tax. Act 55. Effective 6/26/97.

TELECOMMUNICATIONS TAX

Sales of telecommunication services provided to a Vermont service address are subject to sales tax under Title 32 at the rate of 4.36 percent. A "Vermont service address" is the location in Vermont of communication services equipment from which the telecommunications services are originated or at which communications services are received by a purchaser. In the event this may not be a defined location, as in the case of mobile telephone service, maritime systems, air-to-ground systems and the like, Vermont service address shall mean the location in Vermont of a taxpayer's primary use of the communication services equipment as defined by telephone number authorization code, or location in this state where bills are sent. Wholesale sales of telecommunication services and sales of coin-operated telecommunication services are exempt. There is a $20 reduction per month per residential line and no purchaser or user will be subject to telecommunications tax in excess of $10,000 in any one calendar year. Refunds of payment in excess of that amount must be applied for on or after January 1 for the prior calendar year. Act 60. Effective as to services that are provided on or after 9/1/97 and are billed in the regular course of the provider's business on or after 10/1/97.

1998 TAX LEGISLATION

ACT 60 TRANSITIONAL PROVISIONS

The legislature set the equalized yield amount for fiscal year 2000 at $40.00. In fiscal year 2000, any municipality having a fiscal year 1999 equalized statewide education property tax rate of: (1) at least $0.65 but not more than $1.10 shall be subject to the statewide property tax at an equalized rate of $1.10; (2) less than $0.65 shall be subject to the statewide property tax at an equalized rate of the greater of the 1999 rate plus $0.45, or the 1999 rate plus 80% of the difference between that rate and $1.10; (3) more than $1.10 shall be subject to the statewide property tax at an equalized rate of $1.11. Act 156, Sec. 56.

A municipality's combined municipal, school district and statewide equalized property tax rate for fiscal year 1999 is limited to 40% more than the combined rate for 1998 as long as its 1999 municipal budget is no more than 110% of its 1998 budget and its 1999 education budget is no greater than its 1998 education budget adjusted by the index for state and local purchases of goods and services and for certain extenuating circumstances. Act 71, Sec. 67.

If a school district which qualifies for the 40% cap adopts a 1999 school budget (adjusted for index) which is the same or is less than its 1998 school budget by no more than 10%, it is not required to set an equalized education rate which is more than 35 cents higher than its 1998 equalized school tax rate. (Equalized school tax rate means the statewide education tax rate and any equalized local school property tax rate.) Act 71, Sec. 67.

Municipalities which have a 40% reduction in the equalized education grand list from 1996 to 1997 as a result of the elimination of machinery and equipment form the education grand list are limited to a 50 cent increase in their combined municipal and school rate. Act 71, Sec. 67a.

The property tax reduction benefit for any individual resulting from application of this cap and the 35 cent cap cannot exceed $5,000. Act 147, Sec. 170a.

CHANGES AFFECTING MUNICIPALITIES

For a municipality which has not passed a budget, payments to the State shall be based on the municipality's last adopted budget. Act 71, Sec. 95.

Except with respect to declared homesteads, municipalities will assess and collect statewide and local share property taxes in the same manner they have assessed and collected property taxes in the past. Act 71, Secs. 1, 2.

In case of insufficient property tax payment to a municipality, payments will be allocated first to municipal property tax, next to local share property tax, and last to statewide education property tax. Act 71, Sec. 11.

PILOT payments will be based on adjusted grand list information for the prior year (current year information is not available when payments are made). Act 71, Sec. 25.

Aggregate fair market value and coefficient of dispersion will be determined annually. In the recent past it has been done biennially. Act 71, Sec. 35.

Mobile homes may be moved upon payment of property taxes due on the home only effective July 1, 1998. Under current law towns require payment of tax on both home and land before issuing a mobile home uniform bill of sale. Act 71, Sec. 35a.

The Commissioner may contract with municipal tax collectors or others to collect delinquent property taxes. Act 71, Sec. 79.

CORPORATE INCOME TAX

The Commissioner may allow, and in certain cases require, the payment of corporate estimates by electronic funds transfer. Electronic funds transfer may be required when a taxpayer already is required to make federal payments electronically and when a taxpayer has written two or more bad checks to the Department in the prior two years. Act 156, Sec. 7.

Effective for tax years beginning on and after January 1, 1998, a person, including a corporation, may apply to the Vermont Economic Progress Council (VEPC) for any three of the following five corporate tax credits:

1. A credit for a percentage of the taxpayer's annual increase in payroll costs (wages and salaries) for Vermont employees (the credit percentage ranges from 5% to 10% and depends upon the taxpayer's annual sales);

2. A credit for 10% of qualified research and development expenditures, as defined by IRC § 41(b), undertaken within the state for the year claimed;

3. A credit for 10% of the qualified training, education, and work force redevelopment expenditures within Vermont (the credit percentage increases to 20% if the expenditures are made with respect to welfare-to-work participants);

4. A credit equal to the difference between the taxpayer's Vermont income tax liability as computed using an equally weighted three-factor apportionment formula with a double-weighted sales factor (this credit is only available to entities doing business in Vermont and one or more other states); and

5. A credit equal to a percentage of the investment in excess of $150,000 in plants, facilities, machinery, and equipment within Vermont.

VEPC approval of any of these credits may be for up to five years. The credits have a carryforward period of five years and may not be carried back. Penalties apply if the owner ceases to be eligible within six years of the tax year in which the credit is first claimed. Act 71, Sec. 48.

The owner of a qualified building - a certified historic structure located in a downtown development district - is entitled to claim a credit in an amount equal to 5% of the qualified rehabilitation expenditures pursuant to 26 U.S.C. § 47(c). This credit is available against the individual income tax or the corporate income tax. Act 120, Sec. 3.

The owner of a qualified building - an older or historic building located in a downtown development district - is entitled to claim a credit in an amount equal to 25% of an amount not to exceed $100,000 of qualified expenditures certified by the local board empowered by law with the primary planning responsibility for the municipality. The credit is available against the individual income tax, the corporate income tax or a state franchise tax. Act 120, Sec. 4.

A tax credit is available for each taxable year to a qualified employer against the Vermont income tax liability of the employer. The credit is equal to the amount of training expense expended to provide training to a qualified employee in that year up to $400. Act 120, Sec. 5a.

EQUALIZED EDUCATION GRAND LIST

Noncommercial sheds on the two acre homestead are included within the definition of "homestead". Act 71, Sec. 7.

Utility cables and lines, poles and fixtures (except those taxed as telephone company property), gas distribution lines, ski lifts and snow-making equipment are part of the education grand list. Act 71, Sec. 7.

The sale of standing timber does not change the value of the underlying property on the education grand list. Act 71. Sec. 7.

Municipally owned property in that municipality which is used for the provision of utility services is not part of the education grand list. Act 71, Sec. 7a.

The value of remediation expenditures incurred with respect to certain "Brownfields" are exempt from the education property tax grand list. Act 71, Sec. 53.

Unoccupied new facilities or unoccupied facilities under renovation or expansion, owned by a business that has obtained the approval of the VEPC that are less than 75% complete and not in use as of April 1 of the applicable tax year are exempt from the education property tax grand list for a period not to exceed two years. Act 71, Sec. 53.

FUEL GROSS RECEIPTS TAX

The fuel gross receipts tax is extended until July 1, 2003. Act 156, Sec. 32.

GAMES OF CHANCE

An appeal from the Commissioner's decision to revoke a license to sell break-open tickets in Vermont is to the Superior Court on the administrative record. This explicitly conforms these appeals to those of other license revocations. Act 156, Sec. 27.

HAZARDOUS WASTE TAX

The tax will now be imposed on a person who initiates a shipment of hazardous waste in Vermont and is required to file a manifest rather than on a generator of hazardous waste. A tax at similar rates is imposed on waste treated, recycled or disposed of at a facility within the state. The exemption for discharge into a public sewage treatment facility is repealed and an exemption for persons importing hazardous waste into the state from a foreign country is created. Act 133.

HOMESTEAD PROPERTY TAX INCOME SENSITIVITY

The homestead property tax adjustment for 1998/99 property taxes will be in the form of a payment made on or before July 15, 1998. The factors used to calculate the payment will be based on 1998 school district spending. Applications for this payment may be filed until December 1, 1998. As with the rebate program, only full-year residents are eligible for income-adjusted homestead property taxes. Act 71, Sec. 7, 18.

The income adjustment for homestead property taxes which are paid to the state beginning in 1999 is available only for declared homesteads. Only full year residents may declare a homestead. Act 71, Sec. 7, 12, 15.

A homestead declaration filed with a property transfer tax return is timely filed. Act 71, Sec. 13.

For the "super-circuit breaker" claims (available to those with household income of $47,000 or less) the calculation is based on *income-adjusted* property tax assessed in the fiscal year. In the past, the calculation was based on taxes paid in the calendar year. Act 71, Sec. 15.

The renter rebate program is based on a maximum $47,000 household income. For claims filed in 1999 for 1998, "rent constituting property taxes" means, at the claimant's option, either 21% of the gross rent *or* that portion of the gross rent which equals the property tax assessed for payment in the calendar year allocable to the claimant's rental unit for the period rented by the claimant. Act 71, Sec. 16.

After 1998, applications for income adjusted homestead property taxes are due on the due date for filing the federal return with extension (not April 1 as provided in Act 60). Act 71, Sec. 17.

A mobile home owner may include lot rent paid in addition to property taxes paid on the mobile home in calculating his/her property tax adjustment. Act 71, Sec. 16.

The credit certificate portion of the property tax rebate program is repealed effective January 1, 1998. Act 71, Sec. 19.

Beginning in 1999, property tax bills will show the homestead tax separately. Municipalities must notify property owners who have a declared homestead of the value of the homestead portion of the parcel as well as the total value. This homestead value and any subsequent change in homestead value may be appealed in the same manner as the total value. Act 71, Sec. 64.

An income tax refund may be set off against a taxpayer's education tax liability. Act 71, Sec. 11.

Beginning in 1999, on or before August 1, the Department will assess the education property tax on homesteads. This tax will be due to the Department as follows: 25% on September 1; 25% on November 15; and the balance after income adjustment on April 15. Payments may be made by credit card or automatic bank account withdrawal. Act 71, Sec. 79.

A homeowner who has a newly constructed home which was not built on April 1, 1997 and therefore not on the 1997 grand list, but which was built and occupied by December 31, 1997 may receive a homestead reduction payment based on the 1998 grand list value. Act 71, Sec. 80.

In case of insufficient payment to the Department, payments will be allocated first to liabilities other than education property taxes, next to local share property tax, and last to statewide education property tax. Act 71, Sec. 11.

LAND GAINS TAX

Land that is a mobile home park which is transferred in a single purchase to a group composed of mobile home park leaseholders or to a nonprofit organization that represents such a group is exempt from land gains tax. Act 103, Sec. 12.

LOCAL OPTION TAXES

Municipal authority to impose local option taxes, authorized by Act 60, is expanded to four years (through December 31, 2002) and to two additional categories of municipalities: (1) those in which the equalized grand list value of personal property, business machinery, inventory, and equipment is at least 10% of the equalized education grand list in fiscal year 1998; and (2) those in which the combined education tax rate of the municipality will increase by 20% or more in fiscal 1999 or in fiscal 2000 over the rate of the combined education property tax in the previous year. For 1999, the municipality receives 80% of the tax reported reduced by 5% to reflect the difference between the amount reported and collected; for 2000 and 2001, it is reduced to 70%; and for 2002 to 60%. A tax imposed by the municipality prior to July 1, 1998 will be effective January 1, 1999. A municipality may impose the tax any time after December 1, 1998 and it shall be effective beginning on the next tax quarter following 30 days notice to the Department. These taxes will be collected by the state instead of the municipality imposing it. Act 71, Sec. 61.

MEALS AND ROOMS TAX

Commissioner may allow, and in certain cases require, the payment of meals and rooms tax by electronic funds transfer (EFT). Electronic funds transfer may be required when a taxpayer already is required to make federal payments electronically and when a taxpayer has written two or more bad checks to the Department in the prior two years. Payment by EFT does not eliminate the requirement to file returns. Act 156, Sec. 19.

MINIMUM TAX

Effective for tax years beginning on or after January 1, 1998, the annual minimum tax imposed on S corporations subject to the provisions of 32 V.S.A. § 5914 and partnerships and limited liability companies taxed as partnerships under the Internal Revenue Code is increased from $150 to $250. Act 71, Sec. 27a.

Partnerships whose activities are limited to the maintenance and management of their intangible investments and whose annual investment income does not exceed $5,000 and whose total assets are not in excess of $20,000 shall be exempt from the minimum tax on partnerships. Act 156, Sec. 37a.

MISCELLANEOUS

The Commissioner's authority to contract with private collection agencies for the collection of delinquent taxes is continued. Act 156, Sec. 1.

The Commissioner may now provide the court system with information from joint returns as well as individual returns to assist the court system to determine financial need for defender general services Similarly, joint return information may be provided to the Office of Child Support to determine a noncustodial parent's child support obligation. Act 156, Sec. 25, 26.

Eligibility for the Lifeline Program is expanded to include persons under 65 years old in addition to those formerly eligible (persons 65 years of age or older and persons participating in public assistance programs administered by the Department of Social Welfare). Persons under age 65 whose modified adjusted gross income as defined in 32 V.S.A. § 5829(b)(1) for the preceding taxable year was less than 150 percent of the official poverty line established by the federal Department of Health and Human Services for a family of two published as of the preceding taxable year are eligible. The threshold for those 65 and older is 175 percent. Act 135, Sec. 2.

A manual processing fee of $25 may be charged any taxpayer or preparer who files a return which is not on a form approved by the Commissioner or which requires the Department to take special steps to process. This does not mean that computer-generated forms cannot be used, only that the software must be approved in advance to ensure that the forms can be scanned by the Department. Act 156, Sec. 38.

Certain franchise taxes (electric railroads, steamboat, telegraph) are repealed. To the extent they exist, these companies will be subject to Vermont's corporate income tax and they will no longer be exempt from personal property taxes. Act 156, Secs. 2, 3, 10-18.

PERSONAL INCOME TAX

Taxpayers who qualify for and claim a federal credit for business expenditures made to comply with the Americans with Disabilities Act will be allowed to exclude the expenditures from Vermont income on the income adjustment form of the Vermont return. This applies to tax years beginning on or after January 1, 1998. Act 156, Sec. 4.

Effective for taxable years beginning on and after January 1, 1998, the safe harbor for underpayment of estimated taxes is increased from $125 to $250

to parallel the federal change from $500 to $1000. No interest or penalty will be due for underpayment of estimated taxes if the income tax liability is less than $250. Act 156, Sec. 6.

Effective with respect to penalties assessed for taxable years beginning on and after January 1, 1999, the penalty for failure to pay estimated taxes is reduced from 5% per month up to a maximum of 25% to 2% per month up to a maximum of 25%. Negligent failure to pay a tax liability and substantial underpayments of tax liabilities will be subject to a 25% penalty. "Negligence" means any failure to make a reasonable attempt to comply with the provisions of the tax code and "substantial underpayment" means an understatement of 20% or more of the tax. Act 156, Sec. 35.

Businesses and individuals required to file a Federal Form 1099 with the IRS must file a copy of the form with the Department if the services were provided by a nonresident in Vermont. Act 156, Sec. 8.

Nonresidents are exempt from income earned in Vermont for a dramatic performance in a commercial film production to the extent such income would be excluded from personal income tax in the individual's state of residence. The credit is available for tax years beginning on and after January 1, 1998 and ending on or before December 31, 2000. Act 156, Sec. 52.

A taxpayer of this state may claim a credit for sale of a mobile home park in a single purchase to a group composed of a majority of the mobile home park leaseholders or to a nonprofit organization that represents such a group. The credit is equal to 7% of the taxpayer's gain subject to federal income tax for the taxable year. Credit in excess of the taxpayer's liability for the taxable year may be carried forward for credit in the next three taxable years. This credit may be taken against either the individual income tax or the corporate income tax. Act 103, Sec. 11.

Economic advancement tax incentives and historic building credits - see **corporate income tax**. These credits are available to qualifying "persons", including individuals, corporations, partnerships, limited liability companies and trusts. In the case of pass-through entities, the credit is available to the partner, shareholder, member or beneficiary in the same proportion as the income of the person is distributed to those partners, shareholders, members or beneficiaries.

PROPERTY TRANSFER TAX

Appeals from the denial of a refund request are first to the Commissioner, then to the Superior Court. This conforms the transfer tax with other tax refunds appeals. Act 156. Sec. 20.

SALES AND USE TAX

The exemption for sales of electricity, oil, gas and other fuels is expanded. Currently it exists for use "directly or indirectly in manufacturing tangible personal property for sale." Effective July 1, 1998, the exemption is also available for fuels and electricity used on site directly and primarily in the production or provision of products *or services* by a business that has obtained the approval of the Vermont Economic Progress Council (VEPC). Act 71, Sec. 50.

The building materials exemption for sales in excess of one million dollars for downtown redevelopment projects is repealed and replaced with an exemption for similar sales in excess of $250,000 that are either used for production or provision of products or services by a business that has obtained approval of the VEPC or are incorporated into a downtown redevelopment project. This is not available when the municipality where the business is located is receiving an allocation pursuant to 32 V.S.A. § 9819 (see next paragraph below). The existing exemption for construction materials used in manufacturing facilities is expanded to cover *renovations* as well as construction and expansion. Act 71, Sec. 51.

Receipts from tax on sales of building materials used in qualified projects under chapter 76A of title 24 will be allocated to the municipality where the business is located. The allocation becomes available after the expenditure of: $100,000 in municipalities of 7,500 or fewer people; $200,000 in municipalities of more than 7,500 and fewer than 30,000 people; and $1,000,000 in municipalities of more than 30,000 people. Act 120, Sec. 1b.

A new exemption for machinery and equipment, including system-based software, used directly in the production or provision of products or services by a business that has obtained the approval of the VEPC is available July 1, 1998. Act 71, Sec. 52.

There is a sales tax exemption for sales of recycled construction or demolition waste applicable to sales on or after July 1, 1998. The exemption is not available to the generator (the person doing the demolition) but only

to a person who received the materials from the generator with no payment. Act 156, Sec. 21.

Commissioner may allow, and in certain cases require, the payment of sales and use tax by electronic funds transfer (EFT). Electronic funds transfer may be required when a taxpayer already is required to make federal payments electronically and when a taxpayer has written two or more bad checks to the Department in the prior two years. Payment by EFT does not eliminate the requirement to file returns. Act 156, Sec. 23.

Beginning on July 1, 1998, prepaid telephone calling cards will be subject to the sales and use tax at the point of sale. The telecommunication services provided with respect to prepaid calling cards will no longer be subject to the tax on telecommunications services. Act 156, Sec. 30.

Sales and use tax refunds must be requested three years from the *due date* rather than the payment date of the tax. Act 156, Sec. 24.

Tangible personal property purchased to be incorporated in a rail line in connection with the construction, maintenance, repair, improvement, or reconstruction of the rail line is exempt from tax. Act 76.

TAX STABILIZATION AGREEMENTS AND EXEMPTIONS

Tax stabilization agreements relating to industrial or commercial property or certain affordable housing property must be approved by VEPC, not the legislature, as provided in Act 60 in order to affect the education grand list. This review is available year round and is intended to be a less cumbersome forum. Act 71, Sec. 47.

Property owned by a nonprofit fire, rescue or ambulance organization and used for the purposes of the organization is exempt without approval. Act 71, Sec. 47.

Property owned by a municipality situated in another municipality which has been exempted from municipal taxes by vote of the municipality in which the property is situated, and which is used for municipal forest land, municipal water supply or for other noncommercial municipal purposes is also exempt without approval of the Council. Act 71, Sec. 47.

The following property may be exempted by the community but not from the education grand list: forest land; agricultural land, open space and alternative energy plants; commercial or industrial property not approved by the VEPC; and development rights which are not permanently transferred.

These agreements do not reduce the education property tax liability of the municipality to the state, but they do reduce the liability of the property owner to the municipality and thus the tax would have to be spread over the tax base. Act 71, Sec. 47.

VEPC may approve expansion of incremental financing districts and may allow a portion of the increase to be allocated to the municipality for infrastructure improvements. Act 71, Sec. 47.

TAX LITIGATION
1997-1998

SUPREME COURT DECISIONS

Brattleboro Tennis Club, Inc. v. Vermont Department of Taxes, Docket No. 96-116 (February 21, 1997)

The Department assessed Brattleboro Tennis Club (BTC) sales tax on annual membership dues, construing such dues as admission charges subject to taxation under 32 V.S.A. § 9771(4). Amusement charges are defined by statute as "the admission charge (including any subsidiary, service or cover charge) to, and *any charge for the use of any place of recreation or amusement* including athletic events and facilities." (emphasis added) BTC argued that its dues should not be considered admission charges because it is the purchase of a membership that entitles a person to use the facilities. BTC also argued that because the amount of annual dues is based upon costs to maintain the facility rather than the amount of facility usage, the dues are not admission charges. The Court found that despite BTC's claim that membership, not payment of annual dues, entitles a person to use the facilities, its bylaws state that if annual dues are not paid by certain dates, playing rights may be suspended and sold. Moreover, the purpose of the BTC according to its bylaws, is to provide an opportunity to play tennis. Based on these facts, the Court held there was no error in the Commissioner's conclusion that the annual dues are charges for the use of the facility and thus taxable amusement charges. The Court also rejected BTC's "tortured reading" of 32 V.S.A. § 9743(5) which BTC argued exempted its annual dues. On the contrary, the Court found that Section 9743(5) did not create a blanket exclusion from the sales and use tax for qualifying organizations, but rather an exemption for up to four special events not lasting longer than a total of four days.

Morton Buildings, Inc. v. State of Vermont, Tax Department, Docket No. 97-002 (December 26, 1997)

The issue in this case was whether Morton must pay a use tax on raw materials it purchased outside of Vermont, assembled into building components at its Pennsylvania factory, and then brought into Vermont to construct prefabricated buildings. The statute imposes a five percent tax on "any tangible personal property purchased at retail" unless the property "has already been or will be subject to the sales tax under [chapter 233]." The Court rejected Morton's argument that the tangible personal property it used

to construct buildings in Vermont, e.g., trusses, purlins, columns, is not the same tangible personal property that it purchased at retail (principally steel and lumber). The Court found in favor of the assessment for three reasons: First, the Court held that the statutory language as a whole supports the Department's position that Morton sells buildings (not building components) and that the building components are themselves raw materials and are not transformed by partial assembly into something else. It noted that the statutory definitions of "use" and "tangible personal property" are quite broad and cover the raw materials that Morton brings into Vermont. It also found significant the fact that the law provided a specific exemption for components of manufactured products indicating that in the absence of a similar exemption for components of real estate that the general use tax imposition statute extended to Morton's components. Second, the Court held that the changes in character and use of the property were insufficient to bring it under the manufacturing exception to the statutory coverage. Finally, the Court found that it would be inherently unfair to similarly situated taxpayers and contrary to the complementary nature of the sales and use tax not to impose the use tax in these circumstances.

Dube v. Vermont Department of Taxes, Docket No. 97-176 (February 6, 1998)

In this income tax appeal, the Dubes argued that the Department had no authority to tax their income because (1) the income tax is an excise tax that unconstitutionally imposes a direct unapportioned tax on revenue-taxable activities rather than on income; and (2) Vermont tax liability depends on federal tax liability, and no federal statute makes them subject to federal tax liability. The Court found both arguments without merit. The Constitution granted Congress the authority to levy income taxes. The Sixteenth Amendment clarified that the imposition of income taxes is not subject to apportionment (by a consideration of the sources from which the taxed income may be derived) among the several states. With respect to the Dubes' second argument, the Court held that the Internal Revenue Code leaves no doubt that individuals with income over a minimum amount must pay a tax; that the Dubes were required to pay a federal tax; and further that they were required to file a Vermont tax under Vermont law based on their federal income tax liability.

Kuch v. State of Vermont Department of Taxes, Docket No. 97-511 (June 12, 1998)

The Department denied a credit against Appellants' Vermont income tax liability for income taxes they paid to New York City. The Court affirmed. Under 32 V.S.A. § 5825, a resident individual is entitled to receive credit against the Vermont income tax for that taxable year "for taxes imposed by, and paid to, another state or territory of the United States, the District of Columbia, or province of Canada, upon the taxpayer's income earned or received from sources within that state, territory, district or province during that portion of the taxable year...." The Court found that the language of § 5825 plainly refers to taxes imposed by the state alone and further that related statutes show that the Legislature refers specifically to "state and local" taxes when it intends to include local taxes and to Vermont and "its political subdivisions" to refer to Vermont municipalities. The Court rejected Appellants' interpretation of "state" which would render all such references surplusage. The Court also rejected taxpayers' claim that the Department's construction resulted in double taxation since taxpayers paid no municipal income tax in Vermont. Appellants also protested that imposition of penalty with respect to their underpayment. The Court held that in view of the plain language of the statute and tax return instructions that indicated that the taxpayer should include only the amount of tax paid to other states, "not to any city", the taxpayer could not avoid imposition of penalty based on "reasonable cause".

Spagnuolo v. State of Vermont Department of Taxes, Docket No. 97-371 (June 17, 1998)

The Court affirmed the Commissioner's determination that Appellant is personally liable for meals and rooms, sales and use, and withholding taxes imposed on a corporation with which he was affiliated. The evidence showed that Appellant was the de facto treasurer of the corporation in that he: (1) controlled the corporation's finances and maintained the business records; (2) indicated to Department officials that he was the person responsible for tax matters; (3) represented the corporation during the audit; and (4) negotiated and signed agreements with the Department concerning the corporation's tax obligations. Any objection to admission of certain documents based on lack of authentication was waived when Appellant failed to object to admission at the administrative hearing. Admission of the documents was not "plain error" as argued by Appellant since there was never any allegation that Appellant did not sign the documents admitted into evidence and consequently no suggestion that their admission had any impact on the fairness of the proceedings or the outcome.

Mountain Cable Company v. State Department of Taxes, Docket No. 97-290 (November 13, 1998)

Installation and connection fees charged by cable television companies are subject to sales tax under Vermont law. Sales tax is imposed on amusement charges under 32 V.S.A. § 9771(4) and "amusement charge" is defined as "...including specifically service charges of cable television systems...". The Court rejected taxpayers' argument that "service charges" did not include installation and initiation fees and found that in the context of the sale of tangible personal property, fees designated as "service charges" most often denote charges associated with the installation or delivery of the product. The fact that in the cable television industry the term "service charge" might be used to refer to monthly fees or programming services did not persuade the court that it was limited to that meaning, noting that the "cable industry cannot infect the tax code with an ambiguity simply by giving different names to the various fees it imposes for providing cable signals." Moreover, taxpayers' argument was inimical to the broad language the legislature used to define "amusement charges" and contrary to the presumption established in 32 V.S.A. § 9813(a) that "all receipts for ... all amusement charges of any type mentioned in subdivision (4) of section 9771, are subject to tax until the contrary is established, and the burden of proving that any receipt of amusement charge is not taxable hereunder shall be upon the person required to collect tax." Facts informing the lower court decision were the mandatory nature of the initial fees as a condition of receiving cable services, even if a customer's house is cable-ready; the absence of any relationship between those fees and the actual costs of installation; and the discounts on such fees for those who subscribe to a more expensive package of programming. The Superior Court found the initial fees indistinguishable in nature and purpose from the subsequent monthly service charges for sales tax purposes. The Supreme Court agreed and affirmed.

SUPERIOR COURT DECISIONS (not appealed)

In re Jeffrey Colburn, Docket No. S1407-96 CnC (August 28, 1997)

The Court affirmed the Commissioner's determination that the transfer of property from Appellant to his brother was not an exempt transaction. 32 V.S.A. § 9603(5) exempts only certain classes of inter-family transfers, not including transfers between siblings. In imposing a property transfer tax, the Department did not interpret the statute mechanically but rather as required by law. It is up to the Legislature to determine what transfers are exempt. Although the transaction could have been structured so as to avoid the property transfer tax (by transferring to the mother who then

transferred to the brother), that is irrelevant because that is not what occurred.

Prevost v. State of Vermont, Department of Taxes, Docket No. S389-96 Wrcr

In this domicile case, the Superior Court upheld the Commissioner's assessment of income tax against Appellant as a Vermont domiciliary based on the following facts: Appellant was originally domiciled in Vermont; she moved to Connecticut to attend college in 1962; since her graduation she continued to reside in Connecticut where she has worked as a teacher; throughout the pertinent time, she maintained a Vermont driver's license, a Vermont automobile registration, and a Vermont voter registration; she used her Vermont address on numerous documents, including federal income tax returns, non-resident or part-year resident Connecticut income tax returns, W-2 employment forms, and Connecticut banking forms; she has consistently spent most of her leisure time in Vermont; and she has taken steps to acquire and maintain a share of ownership of her family home in Vermont. Although the Court found it was clear that Appellant moved to Connecticut and resided in Connecticut, it held that the record supported the Commissioner's conclusion that Appellant never formed the necessary intent to remain in Connecticut indefinitely given her continuing ties with Vermont, that Appellant had her home in Vermont and was only temporarily absent.

In re Michael St. Hilaire, Docket No. S0155-97 CnC (November 7, 1997)

The Superior Court affirmed the Commissioner's determination of personal liability for meals and rooms and withholding taxes, citing evidence that showed that Mr. St. Hilaire controlled the financial aspects of the business, he signed an agreement with the State that he would pay the taxes on an installment basis and that he was the officer responsible for collecting and remitting taxes to the state.

1997 FORMAL RULINGS

97-01

The facts in this ruling cannot be summarized while maintaining taxpayer confidentiality.

97-02 Sales and use tax

This ruling addresses the applicability of the manufacturing exemption to certain support equipment delivered as part of a construction project. 32 V.S.A. § 9741(14) exempts machinery and equipment used directly and exclusively to manufacture products for sale.

Cleanroom Components and Equipment for Ensuring a Clean Environment Cleanroom configuration directly controls the manufacturing function of keeping highly processed, tightly controlled air around the product and therefore elements of this configuration are exempt: raised floors, walls, ceilings and light fixtures to the extent that the fixture constitutes part of the control of the air flow. Permanently cemented flooring is real property and therefore not exempt. The make-up air system creates a manufacturing supply. It is substantially different from the air circulated in other areas and is used only in the limited area where it can be used to control the product and therefore is exempt. The house vacuum system is a general purpose system for use within the cleanroom and only indirectly used in manufacturing and is not exempt.

Machinery and Systems Integrated into Manufacturing Tools To the extent that tool hook-ups (ductwork, pipe, electrical) are supporting a system which is an exempt manufacturing system or is in the cleanroom or connecting machinery in the cleanroom to support equipment located in adjacent areas, the hook-up is exempt. Voltage step-down and other functions of routing or converting electricity at a location remote from the production area is not a direct manufacturing process and components of the electrical system are not exempt until the control switch near the machine. A closed loop process water cooling system which removes heat from the manufacturing equipment and which serves only equipment used directly and exclusively in manufacturing is exempt. Process exhaust system is exempt only to extent that it removes contaminants from the cleanroom. Waste disposal and pollution abatement are not exempt manufacturing functions and therefore this system and a process waste drain system are taxable to the extent that they serve these functions after waste has been removed from the product area. A process vacuum system which connected to various tools and operates controls within the tools is exempt.

Deionized Water System Deionized water is a supply used in manufacturing. The manufacture of a supply is itself a manufacturing step and therefore, the equipment used to manufacture the deionized water is exempt.

Gas and Chemical Supply and Processing A system for delivery of a manufacturing supply to the production area is taxable because delivery is a pre-production function. However, at the point where processing of the substance is taking place within the systems, i.e., dilution, mixing, purification, the systems are exempt.

Multi-purpose Manufacturing Systems Various systems (chilled water system, glycol-chilled water system, steam generation and distribution system and high temperature hot water system) are used to control the temperature and humidity in the processing of air supplied to the cleanroom. These systems also have other functions. If no more than 4 percent of the capacity of any of these systems is for other than direct manufacturing functions, the system is exempt.

97-03

The facts of this ruling cannot be summarized while maintaining taxpayer confidentiality.

97-04 Corporate income tax

A credit available to manufacturers under 32 V.S.A. § 5930 may not reduce a manufacturer's Vermont liability in any one year by more than 80 percent of the "incremental tax". Unused credits may be carried forward. A company and two affiliated corporations filed a consolidated Vermont income tax return for 1995. For each of the last 3 years ending before January 1993 the companies filed separate returns. One of the affiliated companies indicated that it did not have activity in Vermont which would subject it to Vermont tax in 1992. The company elected to use its average Vermont tax liability for the 3 years prior to January 1993 as the basis for incremental income. The 80 percent incremental value is calculated by subtracting from the current year's liability the average liability of the elected base year period. For 1995, the current year's Vermont income tax liability is that portion of the liability of the affiliated group which is attributable to the company (not its affiliates). The portion attributable to the company is determined by prorating the total liability in proportion to the liability each corporation would pay on a separate return basis. The Commissioner may provide for another calculation that clearly reflects income. However, the calculation proposed by the taxpayer, wherein a credit resulting from a pro-

forma Vermont liability on a separate filing basis for the current year is applied to the total liability of the combined group, does not give effect to the purpose of the limitation. The limitation is intended to assure that the credit did not reduce liabilities below the base level so that a manufacturer would pay at least the amount of tax that it had been paying before receiving the credit, plus 20 percent of any additional tax which would otherwise be due.

97-05 Sales tax

When purchased by individual consumers, combustible firelogs are exempt from sales tax under 32 V.S.A. § 9741(26) which exempts domestic fuel. The normal use of combustible firelogs is for heating space or for providing light in a primary or secondary residence, similar to wood. A vendor may assume that these items will be used in a manner which is exempt under 32 V.S.A. § 9741(26) when purchased by individual consumers. Sales of combustible logs to businesses are taxable.

97-06 Sales tax

Sales of toothbrushes and floss to individuals whether by stores or dentists are taxable sales because these items are primarily hygienic or preventative in nature. Reg. 9741(2)-1. However, these supplies are exempt from sales tax when purchased by medical or dental professionals for use in a professional office or for dispensing to patients. This is because it is assumed that treatments by medical or dental professionals are to alleviate or correct a medical condition and that dispensing of supplies of nominal value for self-treatment is a legitimate part of that treatment. The fact that these supplies also have a preventative or hygienic function will not by itself cause them to lose the medical exemption. 32 V.S.A. § 9771(2).

97-07 Meals and rooms tax

Meals prepared under a cook/chill process and sold to a business licensed under title 19, chapter 43 of the Vermont Statutes Annotated by its wholly owned subsidiary are "taxable meals" under the definition found in 32 V.S.A. § 9202(10). However, these meals are exempt from tax because they are purchased for resale. The subsequent sales by the company would not be taxable meals because they are "prepared by the employees thereof and served in any hospital licensed under chapter 42 of title 18, or sanitarium, convalescent home, nursing home or home for the aged." 32 V.S.A. § 9202(10)(D)(ii)(IV). The requirement that the meals be prepared by the employees of the company would be met as long as its employees performed substantial preparation (in this case heating), notwithstanding the

fact that employees of the subsidiary company performed more substantial preparation. Whether sales to other institutions are taxable depends on whether the institute furnishing the meals is actually reselling them. Even if one of these other institutions was not reselling the meals, the subsidiary company could still claim an exemption if the meals were furnished on the premises of a school, or to the elderly pursuant to the Older Americans Act, or furnished on the premises of a continuing care retirement community. 32 V.S.A. § 9202(10)(D)(ii)(II), (IX), (XI). If the meals were furnished in a hospital or other facility listed in 32 V.S.A. § 9202(10)(D)(ii)(IV), the subsidiary company could claim the exclusion only if the requirement of preparation by the institution's employees was met.

97-08 Homestead property tax income sensitivity adjustment

Holding bare legal title to real property as trustee will not qualify trustee as owner of the property for purposes of the income adjustment provided by Act 60. Section 51 of the Act provides that the "property tax of an eligible claimant who owned the homestead on the last day of the taxable year shall be adjusted." 32 V.S.A. § 6066(a). "Own" is not defined in the Act. It is presumed that the Legislature used the term in its ordinary sense, to have or possess or have the legal right to possess. Under the trust agreement, the trustee holds legal title but no right to the use, possession or enjoyment of the property, holding title only for the benefit of the named beneficiary.

97-09 Land gains tax

The purchase of all outstanding stock of a corporation from its present owner (company) by a newly formed partnership or limited liability company (purchaser) does not affect the holding period of land owned by the corporation for purposes of the Vermont land gains tax under these circumstances: The corporation, is in the business of real estate development and has been developing and marketing land in a Vermont town for a number of years. It's major asset is a large parcel of land, which is the remaining unsold portion of the development. The parties intend for the corporation's land development and sales operation to continue and to be unaffected by the stock purchase. The company (seller of the stock) does not intend to make an election under section 338 of the Internal Revenue Code. Absent such election, the corporation's present basis and holding period would be unaffected by the stock purchase.

32 V.S.A. § 10004(c) defines "sale or exchange of land" to include "the sale or exchange of shares in a corporation...which effectively entitles the purchaser to the use or occupancy of the land." It is an exception to the general rule that the basis and holding period for purposes of the land gains

tax follow the rules of the Internal Revenue Code. It prevents avoidance of tax through structuring transactions which are effectively land sales as stock transactions. Here, the transaction will not effectively entitle the purchaser to use or occupancy of the land. The corporation is an operating corporation, not merely a land-holding company, and it will continue the operation of its historical business after the stock transfer. Therefore, section 10004(c) does not apply and the holding period of land owned by the corporation for land gains tax purposes would be determined by the Internal Revenue Code.

97-10 Property transfer tax

Transfer of 60 percent of a real estate development partnership's real property to a newly formed limited partnership is exempt from the property transfer tax because it is a transfer "made to a partnership at the time of its formation, pursuant to which no gain or loss is recognized under section 721 of the Internal Revenue Code" and because it appears that there are sufficient non tax-avoidance reasons for the transfer. 32 V.S.A. § 9603(15). Initially the partnership will be the general partner and a limited partner of the new limited partnership and the owners of the real estate partnership will be limited partners; subsequently, the partnership will distribute its general partnership and limited partnership interests in the limited partnership to the owners so that they will be general and limited partners of the limited partnership and general partners of the partnership. The Internal Revenue Code does not recognize gain or loss to a partnership or any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership. However, if the transfer was structured an initial partnership contribution only to accomplish an otherwise taxable transfer in an exempt manner, it will be taxable for Vermont property transfer tax purposes. Here, the real estate being transferred is long-term rental properties; the assets being retained by the partnership are primarily properties being developed or having the potential for development in the near future. This separation will serve to shield the long-term real estate investments to be held by the limited partnership from some risks associated with the development activities of the partnership. The limited partnership will also be a vehicle for shifting income to other family members through limited partnership interests. Finally, the transaction will allow the avoidance of probate and sale of the limited partnership assets upon the deaths of the owners. Avoidance of estate tax as a motivation for the transfer does not disqualify it from the exemption.

1998 FORMAL RULINGS

98-01 Land gains tax

Affiliate company 1 purchased land from affiliate company 2 and other land from affiliate company 3. "Quarter share" interval ownership condominium units have been on the purchased land pursuant to the Vermont Condominium Ownership Act. All three affiliate companies are members of the parent company affiliated group and companies and join in filing a federal consolidated income tax return. Under I.R.C. Reg. § 1.1502-13(b)(1), the holding period in the case of inter-company transfers between corporations that are members of the same consolidated group is the sum of the holding periods of the transferor and transferee. The holding period for purposes of the Vermont land gains tax follows the holding period rules in the Internal Revenue Code, including "tacking". Reg. § 1.10005(d)-1. The regulation also provides that tacking under the Internal Revenue Code normally occurs when there is a sale or exchange in which nonrecognition gain is permitted and the basis is either a carry-over basis or a substituted basis. This was an inter-company transaction so the holding period in the hands of affiliate 2 and affiliate 3 tack to affiliate 1's holding period for purposes of the Vermont land gains tax.

98-02 Sales and use tax

A publication more closely fits the definition of a newspaper than a magazine and therefore sales of the publication are exempt from Vermont sales and use tax pursuant to 32 V.S.A. § 9741(15). Although published only monthly similar to a magazine, other characteristics weigh in favor of treating publication as a newspaper, e.g., its physical appearance (it is printed on newsprint and is unbound) and the fact that it reports current sports news though not as current as a daily newspaper.

98-03 Local option taxes

Local option taxes (a one percent sales tax; a one percent meals and alcoholic beverages tax; and a one percent rooms tax) may not be imposed by municipality in which none of these conditions were met:

(A) the education property tax rate in 1997 was less than $1.10 per $100.00 of equalized education property value; or

(B) the equalized grand list value of personal property, business machinery, inventory, and equipment is at least ten percent of the equalized education grand list in fiscal year 1998; or

(C) the combined education tax rate of the municipality will increase by 20 percent or more in fiscal year 1999 or in fiscal year 2000

over the rate of the combined education property tax in the previous fiscal year.

24 V.S.A. § 138. Even if members of the Legislature believed municipality would qualify under (B) when that provision was enacted, as the numbers were finally reported by the municipality, it did not. Where the Legislature drew a bright line, in this case a quantitative line, establishing entitlement based on the ratio of machinery and equipment to total equalized grand list, that line must be observed.

98-04 Sales and use tax

The sale of assets consisting of real and personal property used for hydroelectric generation as a single sale by a company in the business of electric generation to another company does not trigger a sales tax on the personal property because the sale of the personal property meets the definition of casual sale. "Casual sale" is defined as "an isolated or occasional sale of an item of tangible personal property by a person who is not regularly engaged in the business of making sales of that general type of property at retail where the property was obtained by the person making the sale, through purchase or otherwise, for his or her own use. The selling company acquired the property for its own use and is not regularly engaged in the business of making retail sales of the general type of property being transferred.

98-05 Meals and rooms tax

Foods and beverages sold on the campus of a college are excluded from the meals tax unless an operator other than the college has control of a portion of the college's premises. 32 V.S.A. § 9202(10)(D)(ii)(II). Here, the organization which operates the college has not relinquished control of a portion of their facilities. Rather, it has arranged for another organization which has as its purpose the promotion of the college through cultivating, entertaining and encouraging support of the college alumni, students, parents of students, faculty and other friends of the college, to provide the food and beverage at function which are well integrated with the college's functions. Both organizations are tax-exempt under section 501(c)(3) of the Internal Revenue Code.

TECHNICAL BULLETIN SUMMARIES

TB-01 Land Gains Tax

Interprets 32 V.S.A. § 10005(a), which describes basis for land gains tax purposes. In general, basis is determined under the Internal Revenue Code. Basis of land transferred by a mortgagee or judgment lien creditor is the debt due the mortgagee or creditor, plus costs of acquisition, less the amount of tax benefit from bad debt losses. "Debt due" does not include unreported interest nor does it include income reversed out by accounting adjustments. "Tax benefit" is written-off bad debt multiplied by the applicable federal and state marginal income tax rates. Basis also includes required payments made to other lienholders/creditors in case of foreclosure under VRCP 80.1.

TB-02 Sales and Use Tax

Details sales/use tax exemption requirements for Section 501(c)(3) organizations under 32 V.S.A. § 9743(3), as amended effective July 1, 1995. Specifies how 501(c)(3) organizations apply for exemption. An organization can qualify for a 501(c)(3) even without IRS designation if it applies for and receives Departmental certification. Explains the exemption for amusement charges and the limits on such exemption where performances are involved. Also explains the prior-year ceiling on gross sales to qualify for exemption (the limit was $5,000 when the Bulletin was written; the limit is $20,000 as of April 30, 1996).

TB-03 Franchise Tax

Vermont franchise tax on deposits held in banks, savings institutions, trust companies and savings and loans is expressly limited to deposits held in Vermont as a result of an amendment to 32 V.S.A. § 5836(b). The amendment's June 30, 1996, sunset has no effect on tax calculation, as the amendment merely clarified existing law.

TB-04 Forms Design

Details the format for returns and reports filed with the Department in order to insure that they can be captured and maintained by scanning and imaging technology. Forms must be designed and distributed by the Department. Clear black and white copies are permitted, as are forms authorized by the Department in advance. Non-complying forms may be rejected and considered unfiled.

TB-05 and addendum Corporate Income Tax

Starting January 1, 1997, each S corporation, partnership, and limited liability company (pass-through entity) doing business in Vermont must declare and pay estimated tax on behalf of each individual or non-individual nonresident shareholder, partner and member. Estimated tax is based on nonresident's share of income from Vermont multiplied by the applicable individual Vermont rate times the highest marginal individual federal rate. Estimated tax declarations and payments are also required of each pass-through entity in a chain of ownership. Estimated tax is credited to the Vermont income tax of the shareholder, partner or member. Estimated tax return disclosure requirements, due dates and filing procedures are outlined. No estimates are required for nonresidents whose share of the entity's income from Vermont does not exceed $100. Effective March 11, 1998, each pass-through entity must pay an annual tax of $250 (previously $150).

Composite Vermont income tax returns may be filed by pass-through entities on behalf of their nonresident shareholders, partners and members under specified conditions. Income reported on composite returns is taxed at 6%. Filing and refund procedures are explained.

TB-06 Corporate Taxes

Supplements TB-05. Responds to frequently-asked questions posed in the Bulletin: (1) S corporations, partnerships and limited liability companies whose sole assets are interest-bearing accounts or stock brokerage accounts earning dividends and whose only business is to manage such assets are not required to pay nonresident estimated tax. They are still subject to the $250 minimum income tax. (2) A Vermont partnership must pay estimated tax for a nonresident S corporation partner. The nonresident S corporation must also pay estimated tax for its nonresident shareholders. The partnership's payments are credited against the S corporation's estimated tax liability. (3) No authority exists for making an estimated tax payment other than at the highest marginal rate. The entity will not, however, be liable for underpayment as long as the individual shareholders', partners' or members' liabilities do not exceed the amounts paid through estimates.

TB-07 Sales Tax (telecommunication)

Basic information is furnished regarding sales tax on telecommunications services. Charges for telecommunications services provided to Vermont service addresses are subject to sales tax for services provided after August, 31, 1997 and billed after September 31, 1997. The tax rate is 4.36%, and the tax is capped at $10,000 per calendar year.

Charges included within the definition of "telecommunications services" are discussed, as is the identification of "Vermont service addresses." Service charges included in the tax base are identified and rules for applying a $20 monthly charge reduction per line are outlined. All generally-applicable sales tax exemptions also apply to the telecommunications tax. Additional exemptions are detailed, including sales to hospital service corporations and credit union organizations.

TB-08 Sales and Use Tax

Discusses the sales and use tax exemption for materials exceeding $1,000,000 which are used within 3 consecutive years for the construction/expansion of facilities exclusively used for manufacturing. Also discusses the exemption for building materials incorporated into downtown redevelopment projects. (Both exemptions were modified since this Bulletin was issued, the latter extensively. Both exemptions are now found in 32 V.S.A. § 9741(39)). A facility is "exclusively used" for manufacturing if non-manufacturing use does not exceed 4% of the total time the facility is used. The tax on $1,000,000 must be paid before the exemption applies, and the exemption extends only to building materials, not supplies such as fuel and electricity. Owners/contractors must file written exemption requests with the Commissioner. Request procedures are outlined. A project-specific exemption certificate will be issued if approved.

TB-09 Sales and Use Tax

Supplements TB-08. Responds to questions posed in the Bulletin: (1) Materials used in site preparation are exempt. (2) Supplies other than building materials are not exempt. (3) Property not consumed in construction is not exempt. (4) The use of the facility for activities not usually conducted on a manufacturing site will disqualify the facility unless such use is occasional or isolated. (5) Any construction or expansion qualifies for exemption as long as direct manufacturing occurs at the facility. (6) A manufacturing facility can occupy only one contiguous piece of property; if property is not contiguous, the $1,000,000 material-use prerequisite must be met on each separate site.

TB-10 Personal Income Tax

Discusses Vermont personal income tax on real estate installment sales. Vermont residents report installment sales of Vermont real estate in Vermont income when reported for federal income tax purposes. This rule also applies to nonresidents. Nonresidents, however, do not include interest income. A nonresident who sells non-Vermont realty and becomes a

Vermont resident during the installment payment period must include in Vermont income those installments reported for federal income tax purposes while a Vermont resident. This rule applies whether or not the income was fully reported in another state. Vermont's credit for tax paid to other states/provinces, 32 V.S.A. § 5825, does not apply to taxes paid in prior years.

TB-11 Sales and Use Tax

Announces a new policy regarding the sales/use tax exemption for packaging under 32 V.S.A.§ 9741(16). Beginning July 1, 1998, returnable or reusable packaging will no longer be considered non-exempt, as long as the packaging has a useful life of no longer than 3 years. The exemption applies only to packaging, such as pallets, reels and skids, beer kegs and water containers, which hold or contain or are used by a manufacturer or distributor to pack and ship tangible personal property.

TB-12 Sales and Use Tax

Charges for service contracts are subject to sales tax under 32 V.S.A. § 9771(6) beginning September 1, 1998. "Service contracts," defined at 8 V.S.A. § 4247(8), include contracts/agreements of limited duration to repair, replace or maintain property for operational or structural failure. Manufacturers' warranties and the like are not "service contracts." Service contracts with entities which are exempt from sales tax, such as the State of Vermont and 501(c)(3) organizations, are not taxable. 32 V.S.A. § 9743. However, service contracts are taxable even though they pertain to equipment which is exempt under 32 V.S.A. § 9741, such as medical/dental equipment, motor vehicles, aircraft, agricultural and manufacturing equipment, and railroad rolling stock. Beginning September 1, 1998, property purchased for use in the performance of service contracts will be deemed purchased for resale and thus not subject to sales/use tax.